IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CR No. 86 of 2001.

Date of Decision: 18.6. 2007.

Jaggannath Sharma ***…..Petitioner.***

Versus

Sanatan Dharam Sabha ***……Respondent.***

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: Mr. Ashok Sharma, Advocate.

For the Respondents: Mr. Ajay Kumar, Advocate.

Dev Darshan Sud, J

The defendant has filed this revision against the order of the learned Trial Court allowing the application under Order 9 Rule 9 of the Code of Civil Procedure filed by the plaintiff for restoring the suit dismissed in default to its original number.

The plaintiff had moved an application for restoration of the suit which was dismissed in default on 20.10.1998. It was averred in the application that the counsel for the plaintiff had informed him that the matter was fixed for consideration on an application under Order 7 Rule

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

18 of the Code of Civil Procedure filed by the plaintiff, and therefore, the presence of the plaintiff or any one on his behalf was not required. It is further averred that the counsel had assured the petitioner that the case would be looked after and his presence is not required. When the case was called out, learned counsel was not present and the suit was dismissed for default. The application for restoration of this suit was filed on 20.10.1998 and the matter was decided on 30.11.2000. The application was allowed subject to payment of Rs. 200/- as costs. Aggrieved by this order defendant has assailed the judgment on a number of grounds.

I have heard learned counsel for the parties and have gone through the record. It is now well settled that no party should suffer on account of the fault of the counsel. in **AIR 1981 SC 1400= (1981) 2 SCC 788** titled **Rafiq and another vs. Munshilal and another** the Hon'ble Supreme Court held that:-

> " The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done every thing in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to

act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job"

"…….Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanor of his agent. The lawyer obviously is in the negative….."

On going through the order and record, I find that the order which has been passed is legal and in accordance with law. This Revision petition is accordingly rejected. However, it is directed that the plaintiff-respondent will pay costs amounting to Rs. 3300/- to the defendant in addition to the costs already imposed by the learned Trial Court. Revision petition is disposed of. There shall be no order as to costs.

18th June, 2007. **(Dev Darshan Sud),J.**
(cm)